IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:14-cv-00075-MR
(CRIMINAL CASE NO. 1-11-cr-00104-MR-DLH-1)

VINCE EDWARD RAY,	)	
	)	
	)	
Petitioner,	)	
	)	
vs.	)	**O R D E R**
	)	
UNITED STATES OF AMERICA,	)	
	)	
	)	
Respondent.	)	
_____	)	

THIS MATTER comes before the Court on Petitioner's Motion for Reconsideration [Doc. 13].

Petitioner is serving a 121-month sentence after being convicted of one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. 841(a)(1). On March 24, 2014, Petitioner filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, in which he contended that (1) trial counsel was ineffective assistance in failing to advocate for a lower sentence for Petitioner; (2) U.S.S.G. § 1B1.10 is unconstitutional in general or as applied to Petitioner; and (3) Petitioner's criminal history was calculated incorrectly. On December 4,

2014, this Court denied and dismissed Petitioner's motion to vacate. [Doc. 11]. On January 5, 2015, Petitioner filed the pending motion for reconsideration, which he brings under Rule 59(e) of the Federal Rules of Civil Procedure.

With regard to motions to alter or amend a judgment under Rule 59(e), the United States Court of Appeals for the Fourth Circuit has stated:

> A district court has the discretion to grant a Rule 59(e) motion only in very narrow circumstances: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or to prevent manifest injustice."

Hill v. Braxton, 277 F.3d 701, 708 (4th Cir. 2002) (quoting Collison v. Int'l Chem. Workers Union, 34 F.3d 233, 236 (4th Cir. 1994)). Furthermore, "Rule 59(e) motions may not be used to make arguments that could have been made before the judgment was entered." Id. Indeed, the circumstances under which a Rule 59(e) motion may be granted are so limited that "[c]ommentators observe 'because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied.'" Woodrum v. Thomas Mem'l Hosp. Found., Inc., 186 F.R.D. 350, 351 (S.D. W. Va. 1999) (quoting 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2810.1 (2d ed. 1995)).

Petitioner has not shown the existence of the limited circumstances under which a Rule 59(e) motion may be granted. That is, Petitioner's motion does not present evidence that was unavailable when he filed his motion to vacate, nor does his motion stem from an intervening change in the applicable law. Furthermore, Petitioner has not shown that a clear error of law has been made, or that failure to grant the motion would result in manifest injustice to him. See Hill, 277 F.3d at 708. For these reasons, the Court will deny Petitioner's motion for reconsideration.

The Court finds that the Petitioner has not made a substantial showing of a denial of a constitutional right. See generally 28 U.S.C. § 2253(c)(2); see also Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong") (citing Slack v. McDaniel, 529 U.S. 473, 484-85 (2000)). Petitioner has failed to demonstrate both that this Court's dispositive procedural rulings are debatable, and that his Motion to Vacate states a debatable claim of the denial of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). As a result, the Court declines to issue a certificate of appealability. See Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts, 28 U.S.C. §

2255.

IT IS, THEREFORE, ORDERED that Petitioner's Motion for Reconsideration [Doc. 13] is **DENIED**.

IT IS FURTHER ORDERED that the Court declines to grant a certificate of appealability.

IT IS SO ORDERED.

Signed: January 21, 2015

Martin Reidinger
United States District Judge